



U.S. Department
of Transportation
**Federal Aviation
Administration**

**Office of the Air Traffic Organization
Western Service Area**

1601 Lind Avenue Southwest
Renton, Washington 98057

MAY 23 2012

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED
COPY VIA FIRST CLASS MAIL**

Mr. David J. Elkins
P.O. Box 531613
St. Petersburg, FL 33747-1613

Dear Mr. Elkins:

Subject: Freedom of Information Act (FOIA) Request 2011-006360WS

This is an Air Traffic Organization (ATO), Western Service Area, interim response to your FOIA request dated May 12, 2011, and amended June 15, 2011, made under the provisions of Title 5 United States Code, Section 552. You have requested a copy of all records previously denied to you by the Federal Aviation Administration, Renton, Washington office.

In our interim responses dated August 18, 2011, October 6, 2011, and November 22, 2011, you were advised that our office has identified records responsive to your request. However, some of the records identified may be of interest to other government offices/agencies. Therefore, in accordance with 49 Code of Federal Regulations, Section 7.16, you were advised that we must coordinate with those offices on the disclosure of these records.

This is to notify you that these records are still being reviewed. We will continue to provide you with updates on the progress of your case until its completion. If you have questions, please contact Ms. Ann Ward, FOIA Officer, ATO, Western Service Area, at (425) 203-4139.

Thank you for your continued patience.

Sincerely,

A handwritten signature in black ink, appearing to read "Johnathon Calkins".

Johnathon Calkins
Manager, Management Support Team
ATO, Western Service Center



U.S. Department
of Transportation
**Federal Aviation
Administration**

**Office of the Air Traffic Organization
Western Service Area**

1601 Lind Avenue Southwest
Renton, Washington 98057

JUL 29 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. David Elkins
10214 S.W. Conestoga Drive
Apt. #70
Beaverton, Oregon 97008

Dear Mr. Elkins:

Subject: Freedom of Information Act (FOIA) Request 2008-005875WS

This is an Air Traffic Organization (ATO), Western Service Area, full-disclosure response to your FOIA request of June 18, 2008. This request was made under the provisions of Title 5 United States Code, Section 552 and sought aircraft identification information from previous FOIA requests.

A search for records was conducted at the Western Service Area, Administrative Services Group FOIA Office on July 21, 2008. The following information was found in the associated FOIA files and is considered to be responsive to your request. Should you wish the Portland Airport Traffic Control Tower to conduct a separate search you will need to agree to fees and resubmit your request.

FOIA No.	Date	Call Sign Identification Group
2005-004772NM-4	March 20, 2005	Other Law Enforcement Agency with a special need
2005-005748NM	May 13, 2005	Other Law Enforcement Agency with a special need
2006-001493NM	October 5, 2005	Federal Bureau of Investigation
2006-001215WS	December 8, 2005	Other Law Enforcement Agency with a special need
2007-004334WS	March 18, 2007	Other Law Enforcement Agency with a special need
2007-005962WS	May 1, 2007	Federal Bureau of Investigation
2008-001675WS	December 14, 2007	Other Law Enforcement Agency with a special need
2008-003783WS	March 12, 2008	Other Law Enforcement Agency with a special need

Your request qualifies for the "All Other" fee category whereby you are not charged for the first two hours of search time, any review time, and the first 100 pages of documents. There is no charge for processing this request.

Sincerely,

J. Mark Reeves
Director, ATO Western Service Center



U.S. Department
of Transportation
**Federal Aviation
Administration**

ORIGINAL

RECEIVED 6/10/09

1701 Columbia Avenue
College Park, GA 30337

JUN 05 2009

Certified Mail – Return Receipt

Mr. David J. Elkins
3910 Central Avenue
Apartment 303
Fort Myers, Florida 33901

Dear Mr. Elkins:

Subject: Freedom of Information Act (FOIA) Control No. 2009-004619(ES)

This is a full disclosure response to your FOIA request dated May 13, 2009 made under the provisions of Title 5 United States Code, Section 552 to the Federal Aviation Administration. You requested information concerning a plane that was following an odd flight path in the Fort Myers, Florida, area on May 5, 2009.


Enclosed are two compact disks from Southwest Florida International Airport Traffic Control Tower of the following data:

- Voice re-recording of east arrival radar position – 2030-2145 UTC
- Radar data - 2030-2145 UTC

Enclosed is an invoice containing the amount due and payment instructions.

Your request has been assigned FOIA Control No. 2009-004619(ES). Please refer to this control number in all subsequent correspondence. If you have any questions regarding this request, you may contact Patricia Facey, Administrative Services Group, ATO Eastern Service Center at (404) 305-5526.

Sincerely,


Felix J. Enriquez
Director, ATO Eastern Service Center

Enclosures



U.S. Department
of Transportation
**Federal Aviation
Administration**

1701 Columbia Avenue
College Park, GA 30337

JUN 19 2009

Certified Mail – Return Receipt

Mr. David J. Elkins
3910 Central Avenue
Apartment 303
Fort Myers, Florida 33901

Dear Mr. Elkins:

Subject: Freedom of Information Act (FOIA) Control No. 2009-004619(ES)

This is in further response to your original and amended FOIA request dated May 13, 2009 and May 26, 2009 respectively, made under the provisions of Title 5 United States Code, Section 552 to the Federal Aviation Administration. You requested information concerning the flight path of aircraft registration #N852LR in the Fort Myers, Florida, area on May 5, 2009.

The aircraft registration number you provided is registered to the Department of Justice (DOJ). The aircraft you are inquiring about is FLNT431 that is a Drug Enforcement Administration (DEA) tactical call sign. However, we have no way of confirming what DOJ entity was flying that particular aircraft on May 5, 2009. The DEA should be able to provide you with that information.

DEA, Headquarters
Freedom of Information Act
ATTN: Katherine Myrick
8701 Morrisette Drive
Springfield, Virginia 22152
Phone Number: (202) 307-7596

In our letter to you dated June 5, 2009 we disclosed all information in the possession of the ATO Eastern Service Area. The FAA has no records concerning items #1, #4, #5, #6, #7, #8, #9, #10, #11, and #12.



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 22 2011

Mr. David J. Elkins
4905 34th Street S., #169
St. Petersburg, FL 33711

RE: FOIA Appeal #10-8393A

2010-008393ES

Dear Mr. Elkins:

This letter responds to your October 19, 2010, administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You are appealing the Federal Aviation Administration's (FAA) October 13, 2010, initial determination to deny your FOIA request of September 15, 2010, for information concerning an aircraft circling Sarasota-Bradenton International Airport, over Tamiami Trail in Brandenton, Florida on September 14, 2010 at 4:45 PM. You specifically requested the following records:

1. Records confirming the N number as 852LR.
2. Records confirming the law enforcement agency operating the aircraft.
3. Records of the radio call sign.
4. Radar plot of 852LR between 4:30 PM and 5:15 PM over Brandenton, Florida.
5. In-flight radio communication with Tampa and Sarasota-Bradenton Airport Air Traffic Control Tower.
6. Records of a preflight plan filed on or before September 14, 2010.
7. A letter acknowledgement from the FAA concerning this request.

In his initial response to your request, the FAA's Southern Regional Administrator stated that the requested information was part of an ongoing investigation by the Drug Enforcement Administration (DEA) and that release of the information would interfere with that investigation. He found that the records were protected from release under Exemption 7(A) of the FOIA, 5 U.S.C § 552(b)(7)(A).

In your appeal, you state that since the FAA acknowledged that the aircraft was operated by the DEA, you are only appealing the withholding of the radar plot, radio telephone call sign, and the in-flight radio communications with either Sarasota/Brandenton tower or Tampa tower. You also state that the FAA is not a law enforcement agency by statute and is not participating with the DEA in an active role in the investigation or sharing of records and therefore Exemption 7 does not apply in this case. You assert that the withheld records do not disclose any tactic or policy not already known to the public that can be monitored by scanners. You discuss a previous lawsuit against the FAA where the agency determined not to use Exemption 7 and relied instead on Exemption "High 2." You conclude that the records are of great public importance because it will show that the DEA conceals misconduct and yet claims "an ongoing investigation" time and time

again. You assert that further withholding will be arbitrary and capricious because in a previous FOIA request for similar records the agency released the documents.

I have reviewed the denial in light of your appeal, the FOIA, and applicable case law, and determine that the information was properly withheld under Exemption 7(A).

Exemption 7(A) of the FOIA authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information... could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Before an agency may invoke Exemption 7, it must demonstrate that the records were "compiled for law enforcement purposes." See John Doe Agency v. John Doe Corp., 493 U.S. 146, 153 (1989). As indicated in our initial response to your request, these records were compiled by the DEA in connection with on-going investigation by that agency.¹ It is immaterial that this information is also held by the FAA because "once [information is] assembled for . . . law enforcement purposes [it] qualify[ies] for protection under Exemption 7 regardless of its original source" or that it also be maintained in a non-law enforcement file.² Kansi v. U.S. Dep't of Justice, 11 F. Supp. 2d 42, 44 (D.D.C. 1998); Exner v. U.S. Dep't of Justice, 902 F. Supp. 240, 242 & n.3 (D.D.C. 1995) (protecting law enforcement documents from disclosure even when maintained in a non-law enforcement file).

Having established that the threshold requirement is met, we must demonstrate that the disclosure of this information "could reasonably be expected to interfere with law enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). This determination requires a two-step analysis of: (1) whether a law enforcement proceeding is pending or prospective; and (2) whether release of the information about it could reasonably be expected to cause some articulable harm. See, e.g., Mathpoth v. Dep't of Justice, 3 F.3d 1533, 1540 (D.D.C. 1993). The term "law enforcement proceeding" includes law enforcement investigations, even those that are long-term. See Moorefield v. U.S. Secret Serv., 611 F.2d 1021, 1026 (5th Cir. 1980); Baez v. Federal Bureau of Investigations, 443 F. Supp.

¹ Courts consistently have found that information and records compiled by the DEA in connection with its investigations satisfy Exemption 7's threshold requirement. See, e.g., Barbosa v. U.S. Dep't of Justice, 2007 WL 1201604, at *3 (D.D.C. 2007); Deglance v. Drug Enforcement Agency, 2007 WL 521896, at *2 (D.D.C. 2007) (noting that "[t]he DEA is a component of the United States Department of Justice and has as its principal function 'the enforcement of criminal laws' and holding that Exemption 7 applies to DEA records systems related to criminal activity); Elkins v. Federal Aviation Admin., 2010 WL 23319, at *5 (D. Or. 2010) (finding that "the identity of aircraft involved in air surveillance is law enforcement material").

² Further, the language of Exemption 7 does not suggest that its scope is limited to information compiled for law enforcement activities undertaken by the agency from which the records were requested. By its plain language, Exemption 7 applies to *all* records or information compiled for a law enforcement purpose. 5 U.S.C. § 552(b)(7); see also Donovan v. Federal Bureau of Invest., 579 F. Supp. 1111, 1120 (S.D.N.Y. 1984) ("Congress made Exemption 7 applicable to all 'records compiled for law enforcement purposes.'") An interpretation of Exemption 7 that limits its applicability to records relating to law enforcement activities undertaken by the agency from which the records are requested would permit requestors to obtain information that would interfere with an on-going investigation by strategically targeting FOIA requests to non-law enforcement agencies. Such a result would be contrary to Congress' intent in adopting Exemption 7. See Donovan, 579 F. Supp. At 1120 ("The purpose of the FOIA is to serve disclosure of federal agency activity, not as a means for private parties to find out what facts or opinions . . . law enforcement agencies have collected or made on them or others.") (citation omitted).

2d 717, 724 (E.D.Pa. 2006) (noting that "law enforcement" includes records compiled in the investigation of crimes).

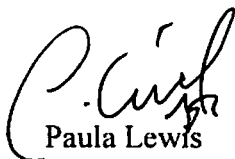
The DEA was consulted regarding the status of the investigation and whether the use of Exemption 7(A) was still applicable. The DEA stated that the withheld records pertain to an ongoing criminal investigation and that releasing the information while the investigation is ongoing would jeopardize the investigation.

In this case, the first requirement under Exemption 7(A) is met because the information is part of an active DEA investigation. See Moorefield v. U.S. Secret Serv., 611 F.2d 1021 (5th Cir. 1980) (finding that a Secret Service investigation is an "enforcement proceeding" for purposes of Exemption 7(A) and that the disclosure of materials in the investigative file would interfere with that proceeding); see also Mapother v. Dep't of Justice, 3 F.3d 1533, 1540 (D.D.C. 1993) (holding that Exemption 7(A) applies when enforcement proceedings are "reasonably anticipated"). The second requirement is met because disclosure of the information would reasonably be expected to interfere with potential criminal proceedings regarding the matter, by revealing the nature, scope, and direction of the investigation, evidence obtained, and the government's strategies. See Elkins, supra, at *5 (finding that the disclosure of the identity of an aircraft involved in aerial surveillance would "jeopardize the effectiveness of that surveillance."); Africa Fund v. Moshbacher, 1993 WL 183736, at *4 (S.D.N.Y. 1993).

I am the person responsible for this decision. This decision has been concurred in for the General Counsel of the Department of Transportation by Claire McKenna, an attorney on his staff.

This is the final administrative action that will be taken on your appeal. If you are not satisfied with this decision, you may appeal it to the United States district court for the district in which you reside or have your principal place of business, the district in which the records are kept, or for the District of Columbia.

Sincerely,



Paula Lewis

Assistant Administrator for
Regions & Center Operations



U.S. Department
of Transportation
**Federal Aviation
Administration**

Air Traffic Org. - Eastern Service Area
1701 Columbia Avenue
College Park, GA 30337

OCT 21 2011

Certified Mail - Return Receipt

Mr. David J. Elkins
300 2nd Avenue, S.E. Box 31
St. Petersburg, FL 33701

RE: Freedom of Information (FOIA) Requests 2011-008400(ES), 2011-008402(ES), and
2011-008403(ES)

Dear Mr. Elkins:

The purpose of this letter is to provide a status update in regard to your FOIA requests dated August 8, 2011 made under the provisions of Title 5 United States Code, Section 552 to the FAA.

With respect to your FOIA requests, we are obligated, pursuant to 49 CFR 7.16, to consult with other government agencies that may have an interest in the release of FAA records, which were responsive to your request. We are still waiting to hear back from those agencies. Therefore, pursuant to 49 CFR 7.33, we need additional time to answer your requests.

If you have any questions regarding this request, you may contact Patricia Facey, Administrative Services Group, ATO Eastern Service Center at (404) 305-5526.

Sincerely,

Myron A. Jenkins
Acting Manager, Management Support Team



U.S. Department
of Transportation
**Federal Aviation
Administration**

**Office of the Air Traffic Organization
Western Service Area**

1601 Lind Avenue Southwest
Renton, Washington 98057

JUL 15 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. David J. Elkins
300 2nd Avenue SE, Box 31
St. Petersburg, FL 33701

Dear Mr. Elkins:

2011-6360WS

Subject: Freedom of Information Act (FOIA) Request 2011-006306WS

This is an Air Traffic Organization (ATO), Western Service Area, interim response to your FOIA request dated May 12, 2011, and amended June 15, 2011, made under the provisions of Title 5 United States Code, Section 552. You have requested a copy of all records previously denied to you by the Federal Aviation Administration, Renton, Washington office.

This is to notify you that our office has identified records responsive to your request. However, due to the volume of records we have identified, our office is requesting additional time to process your request and provide a response to you. This is to confirm that in a telephone conversation on July 14, 2011, you acknowledged and agreed to our request for a 30 day extension to process this request. The estimated completion date is August 15, 2011.

This interim response should not be construed as a denial of your request. The purpose of this letter is to advise you that additional time will be required to process your request. You will be notified if further unavoidable delays occur.

If you have questions, please contact me at (425) 203-4139.

Sincerely,

Ann Ward
FOIA Officer
Air Traffic Organization
Western Service Area